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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BILLY EDWIN WADDELL, an
individual,

12 Plaintiff,

13 v.

14 SOUTHERN CALIFORNIA IBEW-
15 NECA TRUST FUND; J.P. MORGAN
CHASE BANK, N.A., and DOES 1
16 through 10, Inclusive,

17 Defendants.

18 JPMORGAN CHASE BANK, N.A.,

19 Third-Party Plaintiff,

20 Vs,

21 VIRGINIA MARIE DEAN, an individual,
and ROES 1-50, inclusive,

22 Third-Party Defendants.
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Case No. 2:18-cv-10476-JAK-KS

~~PROPOSED~~ PROTECTIVE
ORDER GOVERNING
CONFIDENTIAL INFORMATION

[Discovery Document: Referred to
Magistrate Judge Karen L. Stevenson]

1 IT IS HEREBY ORDERED:

2 1. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than pursuing this litigation may be warranted.
6 Accordingly, the Parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The Parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that
9 the protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles.

12 2. GOOD CAUSE STATEMENT

13 This action is likely to involve trade secrets and other valuable research,
14 development, commercial, financial, technical, and/or proprietary information for
15 which special protection from public disclosure and from use for any purpose other
16 than litigation of this action is warranted. Such confidential and proprietary materials
17 and information consist of, among other things, confidential business or financial
18 information, information regarding confidential business practices, policies and/or
19 procedures, or other confidential research, development, or commercial information
20 (including information implicating privacy rights of third parties), information
21 otherwise generally unavailable to the public, or which may be privileged or otherwise
22 protected from disclosure under state or federal statutes, court rules, case decisions,
23 or common law. Public disclosure of such information, documents, and materials
24 would result in prejudice or harm to the Parties by providing their respective
25 competitors with an unfair business advantage. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the Parties are entitled to keep
28 confidential, to ensure that the Parties are permitted reasonable necessary uses of such

1 material in preparation for and in the conduct of trial, to address their handling at the
2 end of the litigation, and serve the ends of justice, a protective order for such
3 information is justified in this matter. It is the intent of the Parties that information
4 will not be designated as confidential for tactical reasons and that nothing be so
5 designated without a good faith belief that it has been maintained in a confidential,
6 non-public manner, and there is good cause why it should not be part of the public
7 record of this case.

8
9 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
10 PROCEDURE

11 The Parties further acknowledge, as set forth in Section 14.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential information
13 under seal. Local Civil Rule 79-5 sets forth the procedures that must be followed and
14 the standards that will be applied when a Party seeks permission from the Court to
15 file material under seal. There is a strong presumption that the public has a right of
16 access to judicial proceedings and records in civil cases. In connection with non-
17 dispositive motions, good cause must be shown to support a filing under seal. *See*
18 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006);
19 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (even
20 stipulated protective orders require good cause showing and a specific showing of
21 good cause or compelling reasons with proper evidentiary support and legal
22 justification, must be made with respect to Protected Material that a Party seeks to file
23 under seal). The Parties' mere designation of Disclosure or Discovery Material as
24 CONFIDENTIAL does not – without the submission of competent evidence by
25 declaration establishing that the material sought to be filed under seal qualifies as
26 confidential, privileged, or otherwise protectable – constitute good cause.

27 Further, if a Party requests sealing related to a dispositive motion or trial, then
28 compelling reasons, not only good cause, for the sealing must be shown, and the relief

sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal, the Party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

4. DEFINITIONS

4.1 Action: *Waddell v. Southern California IBEW-NECA Trust Fund, et al.*, No. 2:18-cv-10476-JAK-KS, U.S. District Court for the Central District of California.

4.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

4.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

4.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

1 4.6 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery.

5 4.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 4.8 House Counsel: attorneys who are employees of a Party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 4.9 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 4.10 Outside Counsel of Record: attorneys who are not employees of a Party
14 but are retained to represent a Party and have appeared in this Action on behalf of that
15 Party or are affiliated with a law firm that has appeared on behalf of that Party, and
16 includes support staff.

17 4.11 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staff).

20 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 4.13 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 4.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”
28

1 4.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 5. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material, but also (1) any information copied or extracted from Protected
6 Material, (2) all copies, excerpts, summaries, or compilations of Protected Material,
7 and (3) any testimony, conversations, or presentations by Parties or their Counsel that
8 might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the
10 trial judge and other applicable authorities. This Order does not govern the use of
11 Protected Material at trial.

12 6. DURATION

13 Once a case proceeds to trial, information that was designated as
14 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
15 as an exhibit at trial becomes public and will be presumptively available to all
16 members of the public, including the press, unless compelling reasons supported by
17 specific factual findings to proceed otherwise are made to the trial judge in advance
18 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
19 showing for sealing documents produced in discovery from “compelling reasons”
20 standard when merits-related documents are part of court record). Any such
21 information that becomes public will no longer be subject to the terms of this
22 Protective Order.

23 7. DESIGNATING PROTECTED MATERIAL

24 7.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies
27 under the appropriate standards. The Designating Party must designate for protection
28 only those parts of material, documents, items, or oral or written communications that

1 qualify so that other portions of the material, documents, items, or communications
2 for which protection is not warranted are not swept unjustifiably within the ambit of
3 this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to impose
7 unnecessary expenses and burdens on other Parties) may expose the Designating Party
8 to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 7.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
14 that qualifies for protection under this Order must be clearly so designated before the
15 material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) For information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or
19 trial proceedings), that the Producing Party affix at a minimum, the
20 legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to
21 each page that contains protected material. If only a portion of the
22 material on a page qualifies for protection, the Producing Party also must
23 clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins). A Party or Non-Party that makes original
25 documents available for inspection need not designate them for
26 protection until after the inspecting Party has indicated which documents
27 it would like copied and produced. During the inspection and before the
28 designation, all of the material made available for inspection shall be

1 deemed “CONFIDENTIAL.” After the inspecting Party has identified
2 the documents it wants copied and produced, the Producing Party must
3 determine which documents, or portions thereof, qualify for protection
4 under this Order. Then, before producing the specified documents, the
5 Producing Party must affix the “CONFIDENTIAL” legend to each page
6 that contains Protected Material. If only a portion of the material on a
7 page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings
9 in the margins).

10 (b) For testimony given in depositions that the Designating Party identifies
11 the Disclosure or Discovery Material on the record, before the close of
12 the deposition all protected testimony.

13 (c) For information produced in some form other than documentary and for
14 any other tangible items, that the Producing Party affix in a prominent
15 place on the exterior of the container or containers in which the
16 information is stored the “CONFIDENTIAL” legend. If only a portion
17 or portions of the information warrants protection, the Producing Party,
18 to the extent practicable, shall identify the protected portion(s).

19 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material.
22 Upon timely correction of a designation, the Receiving Party must make reasonable
23 efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

1 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1, *et seq.*

7 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
8 joint stipulation pursuant to Local Rule 37-2.

9 8.4 The burden of persuasion in any such challenge proceeding shall be on
10 the Designating Party. Frivolous challenges, and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may
12 expose the Challenging Party to sanctions. Unless the Designating Party has waived
13 or withdrawn the confidentiality designation, all Parties shall continue to afford the
14 material in question the level of protection to which it is entitled under the Producing
15 Party's designation until the Court rules on the challenge.

16 9. ACCESS TO AND USE OF PROTECTED MATERIAL

17 9.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending or attempting to settle this Action. Such
20 Protected Material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the Action has been terminated, a Receiving
22 Party must comply with the provisions of section 15 below (FINAL DISPOSITION).
23 Protected Material must be stored and maintained by a Receiving Party at a location
24 and in a secure manner that ensures that access is limited to the persons authorized
25 under this Order.

1 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

- 5 (a) The Receiving Party’s Outside Counsel of Record in this Action, as well
6 as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;
- 8 (b) The officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this
10 Action;
- 11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed
13 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 14 (d) The Court and its personnel;
- 15 (e) Court reporters and their staff;
- 16 (f) Professional jury or trial consultants, mock jurors, and Professional
17 Vendors to whom disclosure is reasonably necessary for this Action and
18 who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A);
- 20 (g) The author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the
22 information;
- 23 (h) During their depositions, witnesses, and attorneys for witnesses, in the
24 Action to whom disclosure is reasonably necessary provided: (1) the
25 deposing Party requests that the witness sign the form attached as Exhibit
26 A hereto; and (2) they will not be permitted to keep any confidential
27 information unless they sign the “Acknowledgment and Agreement to
28 Be Bound” (Exhibit A), unless otherwise agreed by the Designating

1 Party or ordered by the Court. Pages of transcribed deposition testimony
 2 or exhibits to depositions that reveal Protected Material may be
 3 separately bound by the court reporter and may not be disclosed to
 4 anyone except as permitted under this Stipulated Protective Order;

5 (i) Any mediators or settlement officers and their supporting personnel,
 6 mutually agreed upon by any of the Parties engaged in settlement
 7 discussions; and

8 (j) auditors, regulators, and other such entities as is reasonably necessary in
 9 the ordinary course of business and who have signed the
 10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
 12 PRODUCED IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation
 14 that compels disclosure of any information or items designated in this Action as
 15 “CONFIDENTIAL,” that Party must:

16 (a) Promptly notify in writing the Designating Party, and such notification
 17 shall include a copy of the subpoena or court order;

18 (b) Promptly notify in writing the party who caused the subpoena or order
 19 to issue in the other litigation that some or all of the material covered by
 20 the subpoena or order is subject to this Protective Order, and such
 21 notification shall include a copy of this Stipulated Protective Order; and

22 (c) Cooperate with respect to all reasonable procedures sought to be pursued
 23 by the Designating Party whose Protected Material may be affected. If
 24 the Designating Party timely seeks a protective order, the Party served
 25 with the subpoena or court order shall not produce any information
 26 designated in this action as “CONFIDENTIAL” before a determination
 27 by the court from which the subpoena or order issued, unless the Party
 28 has obtained the Designating Party’s permission. The Designating Party

1 shall bear the burden and expense of seeking protection in that court of
 2 its confidential material and nothing in these provisions should be
 3 construed as authorizing or encouraging a Receiving Party in this Action
 4 to disobey a lawful directive from another court.

5 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO
 6 BE PRODUCED IN THIS LITIGATION

7 The terms of this Order are applicable to information produced by a Non-Party
 8 in this Action and designated as "CONFIDENTIAL." Such information produced by
 9 Non-Parties in connection with this litigation is protected by the remedies and relief
 10 provided by this Order. Nothing in these provisions should be construed as prohibiting
 11 a Non-Party from seeking additional protections.

12 In the event that a Party is required, by a valid discovery request, to produce a
 13 Non-Party's confidential information in its possession, and the Party is subject to an
 14 agreement with the Non-Party not to produce the Non-Party's confidential
 15 information, then the Party shall:

- 16 (a) promptly notify in writing the Requesting Party and the Non-Party that
 17 some or all of the information requested is subject to a confidentiality
 18 agreement with a Non-Party;
- 19 (b) Promptly provide the Non-Party with a copy of the Stipulated Protective
 20 Order in this Action, the relevant discovery request(s), and a reasonably
 21 specific description of the information requested; and
- 22 (c) make the information requested available for inspection by the Non-
 23 Party, if requested.

24 If the Non-Party fails to seek a protective order from this Court within 14 days
 25 of receiving the notice and accompanying information, the Receiving Party may
 26 produce the Non-Party's confidential information responsive to the discovery request.
 27 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
 28 any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the Court. Absent a court
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking
3 protection in this court of its Protected Material.

4 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
5 MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order,
12 and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” attached hereto as Exhibit A.

14 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
15 OTHERWISE PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 Parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 Parties may incorporate their agreement in the stipulated protective order submitted
25 to the Court.

26 14. MISCELLANEOUS

27 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 14.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material. If a Party's request to file Protected Material under seal is denied
10 by the Court, then the Receiving Party may file the information in the public record
11 unless otherwise instructed by the Court.

12 15. FINAL DISPOSITION

13 After the final disposition of this Action and exhaustion of any related appeals,
14 within 60 days of a written request by the Designating Party, each Receiving Party
15 must return all Protected Material to the Producing Party or destroy such material. As
16 used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if not
20 the same person or entity, to the Designating Party) by the 60-day deadline that (1)
21 identifies (by category, where appropriate) all the Protected Material that was returned
22 or destroyed, and (2) affirms that the Receiving Party has not retained any copies,
23 abstracts, compilations, summaries, or any other format reproducing or capturing any
24 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
27 reports, attorney work product, and consultant and expert work product, even if such
28

1 materials contain Protected Material. Any such archival copies that contain or
2 constitute Protected Material remain subject to this Protective Order.

3 16. VIOLATION

4 Any violation of this Order may be punished by appropriate measures
5 including, without limitation, contempt proceedings and/or monetary sanctions.

6
7 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

8 DATED: August 6, 2020

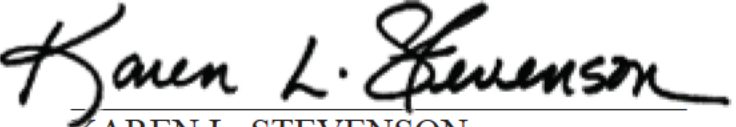
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11 KAREN L. STEVENSON
12 United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address],
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for the
 Central District of California on [date] in the case of *Waddell v. Southern California*
IBEW-NECA Trust Fund, et al., No. 2:18-cv-10476-JAK-KS. I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order
 to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____